

ORDER NO. 1920

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman; and
Mark Acton

Competitive Product Prices
Priority Mail Express
Priority Mail Express Contract 17

Docket No. MC2014-13

Competitive Product Prices
Priority Mail Express Contract 17 (MC2014-13)
Negotiated Service Agreement

Docket No. CP2014-17

NOTICE AND ORDER CONCERNING THE ADDITION OF PRIORITY MAIL EXPRESS
CONTRACT 17 TO THE COMPETITIVE PRODUCT LIST AND REQUEST FOR
SUPPLEMENTAL INFORMATION

(Issued December 20, 2013)

I. INTRODUCTION

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Express Contract 17 to the competitive product list.¹ The Postal Service asserts that Priority Mail Express Contract 17 is a competitive product “not of general applicability”

¹ Request of the United States Postal Service to Add Priority Mail Express Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors’ Decision, Contract, and Supporting Data, December 19, 2013 (Request).

within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2014-13.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.*

Attachment B. The instant contract has been assigned Docket No. CP2014-17.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors’ Decision No. 11-6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract will expire three years from the effective date unless, among other things, the customer terminates the agreement, with or without cause and without penalty, upon 60 days’ written notice to the other party or the agreement is renewed by mutual written agreement. *Id.* at 4. The contract also allows two 90-day extensions of the agreement if the preparation of a successor

agreement is active and the Commission is notified within at least seven days of the contract's expiration date. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a).²

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. NOTICE OF FILINGS

The Commission establishes Docket Nos. MC2014-13 and CP2014-17 to consider the Request pertaining to the proposed Priority Mail Express Contract 17 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 30, 2013. The public portions of these filings can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

² Although the Request appears to state that the certification only pertains to paragraphs (1) and (3) of 39 U.S.C. 3633(a), the certification itself contains an assertion that the prices are in compliance with 39 U.S.C. 3633(a)(1), (2), and (3). See Request at 2; Attachment E.

III. REQUEST FOR SUPPLEMENTAL INFORMATION

Section I.B. of the contract defines the “Effective Date” as “the day following the date on which the Commission issues all necessary regulatory approval.” Request, Attachment B at 1. Section III of the contract provides that the “Effective Date of this Contract shall be one business day following the day on which the Commission issues all necessary regulatory approval.” *Id.* at 4. The Postal Service is requested to clarify which provision is controlling, and, if necessary, file an amendment to the contract. The Postal Service response is due no later than December 27, 2013.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket Nos. MC2014-13 and CP2014-17 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. The response to the request for supplemental information is due no later than December 27, 2013.
4. Comments by interested persons in these proceedings are due no later than December 30, 2013.
5. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Ruth Ann Abrams
Acting Secretary